

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:RFP: [REDACTED]: POSTS-1520910-01  
[REDACTED]

date: December 14, 2001

to: [REDACTED]  
Internal Revenue Service  
Technical Support  
[REDACTED]  
[REDACTED]

from: Associate Area Counsel - [REDACTED]  
(Retailers, Food, Pharmaceuticals and Healthcare)

subject: Entitlement to Refund of Overpayment Interest  
under 28 U.S.C. §2401 and §2501  
Taxpayer: [REDACTED]

E.I.N.: [REDACTED]

Form 1120 for Taxable Years Ended  
December 31, [REDACTED], December 31, [REDACTED],  
and December 31, [REDACTED]

Address:

c/o [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], [REDACTED] [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. §6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Internal Revenue Service (Service) recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Service personnel or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

[REDACTED]

This advice is not binding on the Service and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This is in response to your memorandum dated September 20, 2001 requesting assistance in determining whether [REDACTED] ( [REDACTED] ) is entitled to refunds of overpayment interest under 28 U.S.C. §2401 and §2501 in excess of previously allowed overpayment interest with respect to its federal income tax liabilities for the taxable years ended December 31, [REDACTED], December 31, [REDACTED], and December 31, [REDACTED].

We have concluded that the Service may allow [REDACTED]'s request for a refund of additional overpayment interest not previously allowed by the Service for the year ended December 31, [REDACTED], but must deny the request for refunds of additional overpayment interest for the taxable years ended December 31, [REDACTED] and December 31, [REDACTED]. Therefore, we recommend that the Service issue the requested refund of additional overpayment interest for the year ended December 31, [REDACTED], but deny in writing [REDACTED]'s request for refunds of additional overpayment interest for the years ended December 31, [REDACTED] and December 31, [REDACTED] on the ground that the applicable limitation periods under 28 U.S.C. §2401 and §2501 have expired.

#### **Issue**

Whether the limitation periods for allowing refunds of additional overpayment interest has expired for the taxable years ended December 31, [REDACTED], December 31, [REDACTED], and December 31, [REDACTED]. U.I.L.: 6611.10-00

#### **Facts**

The Service's records reflect allowance and issuance of the following refunds and/or credits related to [REDACTED]'s

Forms 1120:

| <u>Year</u><br><u>Year Ended</u> | <u>Date of Refund</u> | <u>Total Refund</u> |
|----------------------------------|-----------------------|---------------------|
| 12/31/[REDACTED]                 | [REDACTED]            | \$ [REDACTED]       |
| 12/31/[REDACTED]                 | [REDACTED]            | [REDACTED]          |
| 12/31/[REDACTED]                 | [REDACTED]            | [REDACTED]          |

The issued refunds and/or credits consisted of the following items:

| <u>Item</u><br><u>Refunded</u> | <u>Taxable Year Ended</u>                |                                          |                                          |
|--------------------------------|------------------------------------------|------------------------------------------|------------------------------------------|
|                                | <u>12/31/[REDACTED]</u><br><u>Amount</u> | <u>12/31/[REDACTED]</u><br><u>Amount</u> | <u>12/31/[REDACTED]</u><br><u>Amount</u> |
| Tax                            | \$ [REDACTED]                            | \$ [REDACTED]                            | \$ [REDACTED]                            |
| Underpayment                   | [REDACTED]                               | [REDACTED]                               | [REDACTED]                               |
| Interest                       |                                          |                                          |                                          |
| Overpayment                    |                                          |                                          |                                          |
| Interest                       | [REDACTED]                               | [REDACTED]                               | [REDACTED]                               |
| Total                          | \$ [REDACTED]                            | \$ [REDACTED]                            | \$ [REDACTED]                            |

By letter dated [REDACTED] to the Service's Taxpayer Advocate's Office in [REDACTED], [REDACTED], [REDACTED] [REDACTED], [REDACTED]'s power of attorney, reflecting the following:

- a. The above refunds underpaid the allowable amount of overpayment interest as follows:

| <u>Taxable Year Ended</u> | <u>Amount of Additional,</u><br><u>Allowable Underpayment Interest</u> |
|---------------------------|------------------------------------------------------------------------|
| 12/31/[REDACTED]          | \$ [REDACTED]                                                          |
| 12/31/[REDACTED]          | [REDACTED]                                                             |
| 12/31/[REDACTED]          | [REDACTED]                                                             |
| Total                     | \$ [REDACTED]                                                          |

- b. [REDACTED]'s claim and request for issuance of the unpaid allowable overpayment interest plus any other allowable overpayment interest under the authority of 28 U.S.C. §2401 and 2501 by September 15, [REDACTED].

The Service has recomputed the allowable overpayment interest to which [REDACTED] was entitled for the year ended December 31, [REDACTED] as follows:

|                                           |                      |
|-------------------------------------------|----------------------|
| Recomputed Allowable Overpayment Interest | \$ [REDACTED]        |
| Overpayment Interest Allowed and Paid     | <u>[REDACTED]</u>    |
| Unpaid Allowable Overpayment Interest     | \$ <u>[REDACTED]</u> |

We have not verified the accuracy of the Service's recomputation of allowable overpayment interest.

Because the discussion below indicates that the limitation periods for allowance of overpayment interest for the years ended December 31, [REDACTED] and December 31, [REDACTED] have expired, a recomputation of allowable overpayment interest for those years is not necessary.

[REDACTED] has not filed any suit to recover the additional overpayment interest reflected in [REDACTED]'s letter.

#### Legal Discussion

Interest is allowed and paid on any overpayment of federal tax at the overpayment rate established under I.R.C. §6621 (overpayment interest). I.R.C. §6611.

Unlike claims for refund of deficiency interest, a claim for overpayment interest is not subject to an administrative claim for refund. Alexander Proudfoot Co. v. United States, 454 F.2d 1379, 1384 (Ct. Cl. 1972); Lyons v. United States, 71 AFTR2d 93-551 (S. D. Iowa 1992). To the extent that a taxpayer's claim for overpayment interest is not paid by the Service, the claim is not allowed unless the taxpayer commences a civil action against the United States within six years of the date on which the Service allows or schedules the refund of the underlying overpaid tax. I.R.C. §6407; 28 U.S.C. §2401(a) and §2501; Proced. & Admin. Reg. §301.6407-1; Four Star Oil & Gas Co. v. United States, 2001-2 U.S.T.C. ¶70,168 (Fed. Cl.), denied taxpayer's motion for reconsideration and government's motion for reconsideration in part on other grounds, 88 AFTR2d ¶2001-5629 (Fed. Cl. 1001); General Instrument Corp. v. United States, 75 AFTR2d 95-1532 (Fed. Cl. 1995); Barnes v. United States, 137 F. Supp. 716, 718 - 719 (Ct. Cl. 1956), cert. denied, 351 U.S. 922 (1956);

[REDACTED]

Colgate-Palmolive-Peet Co. v. United States, 58 F.2d 499, 503 (Ct. Cl. 1932); Lyons, 71 AFTR2d 93-551; Rev. Rul. 57-242, 1957-1 C.B. 452; Rev. Rul. 56-506, 1956-1 C.B. 959; Rev. Rul. 56-374, 1956-2 C.B. 959, 960.

The filing of a written request or claim for refund (Form 843) within this six-year period will not protect a taxpayer from the running of the limitation period for a refund of overpayment interest. Rev. Rul. 57-242, 1957-1 C.B. 452; Rev. Rul. 56-506, 1956-1 C.B. 959; Rev. Rul. 56-374, 1956-2 C.B. 959, 960.

#### Application of Law to Facts

The limitation period under 28 U.S.C. §2401 and §2501 for allowance of any claim for additional overpayment interest for the year ended December 31, [REDACTED] remains open. Because the Service allowed and paid the overpayment interest through the refund issued [REDACTED], [REDACTED] has until [REDACTED] to commence suit to recover such interest.

However, the limitation periods under 28 U.S.C. §2401 and §2501 for the years ended December 31, [REDACTED] and December 31, [REDACTED] expired on [REDACTED]. Despite the Service's allowance and payment of refunds including overpayment interest for those taxable years on [REDACTED], [REDACTED] failed to commence the required suit to collect any additional overpayment interest within the required six-year period. Four Star Oil & Gas Co., 2001-2 U.S.T.C. ¶70,168; General Instrument Corp., 75 AFTR2d 95-1532; Barnes, 137 F. Supp. at 718 - 719 (Ct. Cl. 1956); Colgate-Palmolive-Peet Co., 58 F.2d at 503. [REDACTED]'s letter dated [REDACTED] did not protect [REDACTED] from the running of the limitation periods under 28 U.S.C. §2401 and §2501. Rev. Rul. 57-242, 1957-1 C.B. 452; Rev. Rul. 56-506, 1956-1 C.B. 959; Rev. Rul. 56-374, 1956-2 C.B. at 960.

#### Conclusion and Recommended Action

The Service may allow [REDACTED]'s request for a refund of additional overpayment interest for the year ended December 31, [REDACTED], but must deny the request for refunds of additional overpayment interest for the taxable years ended December 31, [REDACTED] and December 31, [REDACTED]. Therefore, we recommend that the Service issue the requested refund of additional overpayment interest for the year ended December 31, [REDACTED]. However, we

[REDACTED]  
recommend that the Service deny in writing [REDACTED]'s request for refunds of additional overpayment interest for the years ended December 31, [REDACTED] and December 31, [REDACTED] on the ground that the applicable limitation periods under 28 U.S.C. §2401 and §2501 have expired.

Because no further action is required by this office, we are closing our file.

If you have any questions, please contact me at [REDACTED]  
[REDACTED].

[REDACTED]  
Associate Area Counsel  
(Large and Mid-Size Business)

By: \_\_\_\_\_  
[REDACTED]  
Special Litigation Assistant  
(LMSB)

cc: TL Cats

cc: Mr. James C. Lanning  
Area Counsel, LMSB (CC:LM:RFP)  
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